

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

1006
PL-IT
30130

FILE: B-217231

DATE: January 2, 1985

MATTER OF: Lear Siegler, Inc.

DIGEST:

1. Protest alleging that agency's proposed award to other than low offeror violates the spirit of OMB Circular A-76 is untimely since protest was filed with GAO more than 10 working days after firm's notice of initial adverse agency action on protest filed with contracting agency.
2. Claim for proposal preparation costs is not for consideration where protest is dismissed as untimely.

Lear Siegler, Inc., Management Services Division (Lear), protests the proposed award of an audio-visual services contract at Fort Dix under request for proposals (RFP) No. DABT 35-82-R-0134. According to Lear, the proposed award by the Headquarters, U.S. Army Training Center and Fort Dix (Army), violates the spirit of Office of Management and Budget Circular No. A-76 because Lear offered to perform the contract at the lowest cost to the government but the Army proposes to award the contract to another offeror at a higher price.

We dismiss this protest as untimely.

The record shows that Lear initially objected to the government evaluation procedures under the RFP by letter dated September 23, 1983. On November 1, 1984, a government procurement official verbally advised Lear that that award was pending to another specified offeror at a higher price than the price Lear proposed. Lear filed its protest with this Office on November 29, 1984.

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It appears that Lear's letter of September 23, 1983, to the Army was intended as a protest. Therefore, Lear's protest to our Office, not filed until 4 weeks after Lear was told that award would be made to another offeror, is untimely. Section 21.2(a) of our Bid Protest Procedures (4 C.F.R. Part 21 (1984)) requires that if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive notice of initial adverse agency action." Here, Lear was advised on November 1, 1984, that award was pending to a different offeror. The Army's notification that it intended to award to another offeror in spite of Lear's protest constitutes an adverse agency action on the agency-level protest. See Mars Signal Light Company, B-191901, September 27, 1978, 78-2 C.P.D. ¶ 238. Thus, since the protest to our Office was filed more than 10 working days after Lear had actual or constructive notice of initial adverse agency action, the protest is untimely under section 21.2(a). Central Air Service Inc., B-213205, Feb. 6, 1984, 84-1 C.P.D. ¶ 147; SAFE Export Corporation, B-213442, Mar. 19, 1984, 84-1 C.P.D. ¶ 324.

In view of the fact that we have not considered Lear's protest on its merits, we will not consider Lear's claim for its proposal preparation costs. See Allied Carpetmaster, Inc., B-199169, Nov. 5, 1980, 80-2 C.P.D. ¶ 337.

The protest is dismissed.

Harry R. Van Cleve
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General Counsel